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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,295	11/15/2005	Cristiano Casale	1034170-000028	6251

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EXAMINER

VOLZ, ELIZABETH J

ART UNIT	PAPER NUMBER
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3781

NOTIFICATION DATE	DELIVERY MODE
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06/08/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No. 10/531,295	Applicant(s) CASALE ET AL.	
	Examiner ELIZABETH VOLZ	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 February 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2/25/10</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 22 and 31 are objected to because of the following informalities: In Line 2, "does not pas" should be --does not pass--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 22, 23, 27-35 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

4. Regarding Claim 27, in Lines 10-11, it was not previously mentioned that the pull-tab is not part of the rigid plate and not part of the removable portion.

5. Regarding Claims 22 and 31, in Line 2, it was not previously mentioned that the tubular frame does not pass through the through hole in the one wall.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

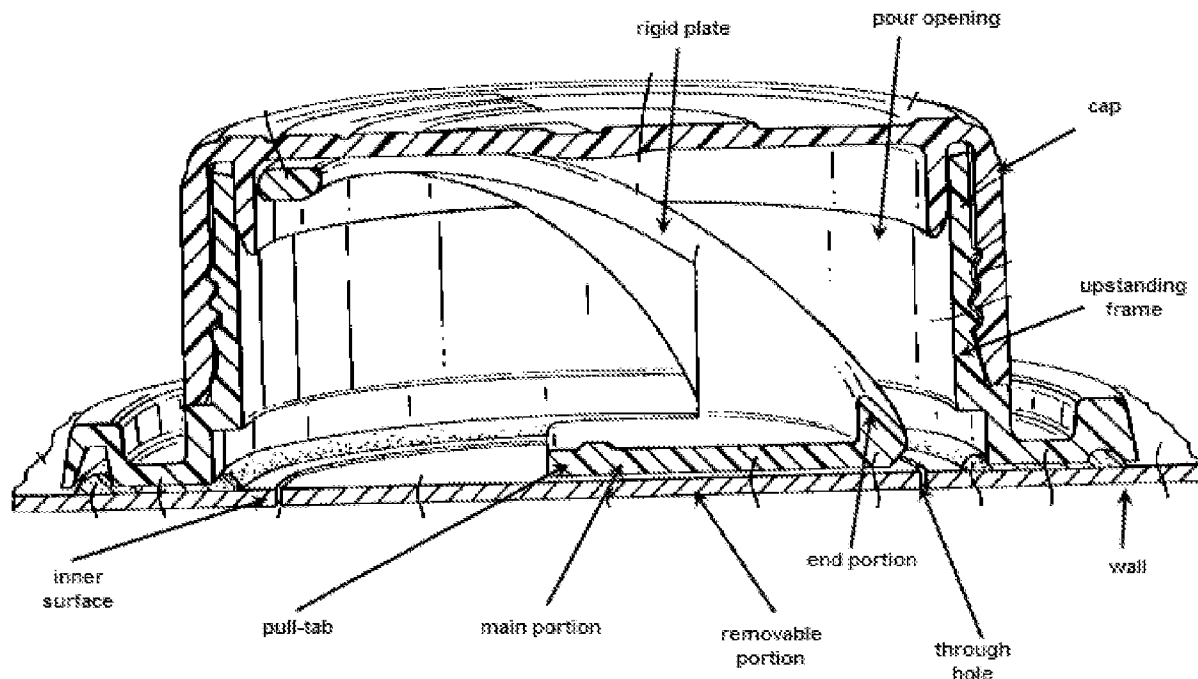
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 18 and 21-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Ramsey et al. (U.S. Pub. No. 2001/0054616).

8. Regarding Claim 18, Ramsey et al. discloses a sealed package of pourable food product comprising: a plurality of walls (Figure 1 below); a through hole (Figure 1 below) passing through one of the walls; a removable portion (Figure 1 below) fixed directly to the one wall and completely covering the through hole; an upstanding frame (Figure 1 below) fixed to the package at a position surrounding the removable portion, the upstanding frame defining a pour opening (Figure 1 below) through which the pourable food product can flow when a part of the removable portion covering the through hole is removed; a cap (Figure 1 below) fitted to the frame and closing the pour opening, the cap being removable from the frame (Figure 1); a rigid plate (Figure 1 below) positioned in the upstanding frame and extractable from the frame by pulling action; a pull-tab (Figure 1 below) of sheet material attached to the rigid plate and attached to the removable portion, and the pull-tab of sheet material connecting the rigid plate to the removable portion so that pulling action applied to the rigid plate after removing the cap is applied to the removable portion by way of the pull-tab of sheet material to cause removal of the part of the removable portion (Figure 1).

Figure 1 (Ramsey et al.)



9. Regarding Claim 21, Ramsey et al. discloses one wall which includes an exterior surface and an interior surface (Figure 1), the frame being tubular (Figure 1) and possessing an outer surface facing an inner surface of the cap (Figure 1), the tubular frame being fixed to the exterior surface of the one wall (Figure 1).

10. Regarding Claim 22, Ramsey et al. discloses a tubular frame (Figure 1 above) which does not pass through the through hole in the one wall (Figure 1).

11. Regarding Claim 23, Ramsey et al. discloses a removable portion which is fixed to the inner surface of the one wall (Figure 1 above).

12. Regarding Claim 24, Ramsey et al. discloses one wall which includes an exterior surface and an interior surface, and the removable portion is fixed to the inner surface of the one wall (Figure 1 above).

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13. Regarding Claims 25 and 26, Ramsey et al. discloses a removable portion which is sealed to an edge of the through hole (Figure 1 above).

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ramsey et al. (U.S. Pub. No. 2001/0054616) in view of Hardt (U.S. Patent No. 4,328,905).

16. Regarding Claim 19, Ramsey et al. discloses a pull-tab which has a main portion (Figure 1 above) and an end portion (Figure 1 above), the main portion being attached to the removable portion and the end portion being attached to the rigid plate (Figure 1). Ramsey et al. does not disclose an end portion folded back onto the main portion. However, Hardt teaches a pull-tab which comprises an end portion 6 (Figure 1) folded over a main portion 5 (Figure 1). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Ramsey et al. to include a folded portion, as taught by Hardt, in order to allow the pull-tab to be removed easier.

17. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ramsey et al. (U.S. Pub. No. 2001/0054616) in view of Colby (U.S. Patent No. 3,576,272).

18. Regarding Claim 20, Ramsey et al. teaches all the limitations substantially as claimed except for breakable strips of connecting material which are parallel to each

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other. However, Colby teaches breakable strips 20/22 (Figure 1) of connecting material which are parallel to each other (Figure 1). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Ramsey et al. to include breakable strips, as taught by Colby, in order to provide a well defined opening.

19. Claims 27 and 30-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ramsey et al. (U.S. Pub. No. 2001/0054616) in view of Sato (U.S. Patent No. 5,103,973).

20. Regarding Claim 27, Ramsey et al. discloses a sealed package of pourable food product comprising: a plurality of walls (Figure 1 above); a through hole (Figure 1 above) passing through one of the walls; a removable portion (Figure 1 above) fixed to the one wall and completely covering the through hole; an upstanding frame (Figure 1 above) fixed to the package at a position surrounding the removable portion, the upstanding frame defining a pour opening (Figure 1 above) through which the pourable food product can flow when a part of the removable portion covering the through hole is removed; a cap (Figure 1 above) fitted to the frame and closing the pour opening, the cap being removable from the frame; a rigid plate (Figure 1 above) positioned in the upstanding frame and extractable from the frame by pulling action; a pull-tab (Figure 1 above) of sheet material attached to the rigid plate and attached to the removable portion; and the pull-tab of sheet material connecting the rigid plate to the removable portion so that pulling action applied to the rigid plate after removing the cap is applied to the removable portion by way of the pull-tab of sheet material to cause removal of the

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part of the removable portion (Figure 1). Ramsey et al. does not disclose the pull-tab of sheet material not being a part of the rigid plate and not being a part of the removable portion. However, Sato teaches a pull-tab which is separate from a rigid plate and removable portion (Figure 1). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Ramsey et al. to include a pull-tab separate from a rigid plate and removable portion, as taught by Sato, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

21. Regarding Claim 30, Ramsey et al. discloses one wall which includes an exterior surface and an interior surface (Figure 1), the frame being tubular (Figure 1) and possessing an outer surface facing an inner surface of the cap (Figure 1), the tubular frame being fixed to the exterior surface of the one wall (Figure 1).

22. Regarding Claim 31, Ramsey et al. discloses a tubular frame (Figure 1 above) which does not pass through the through hole in the one wall (Figure 1 above).

23. Regarding Claim 32, Ramsey et al. discloses a removable portion which is fixed to the inner surface of the one wall (Figure 1 above).

24. Regarding Claim 33, Ramsey et al. discloses one wall which includes an exterior surface and an interior surface, and the removable portion is fixed to the inner surface of the one wall (Figure 1 above).

25. Regarding Claims 34 and 35, Ramsey et al. discloses a removable portion which is sealed to an edge of the through hole (Figure 1 above).

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26. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ramsey et al. (U.S. Pub. No. 2001/0054616) in view of Sato (U.S. Patent No. 5,103,973) and Hardt (U.S. Patent No. 4,328,905).

27. Regarding Claim 28, Ramsey et al. discloses a pull-tab which has a main portion (Figure 1 above) and an end portion (Figure 1 above), the main portion being attached to the removable portion and the end portion being attached to the rigid plate (Figure 1). Ramsey et al. does not disclose an end portion folded back onto the main portion. However, Hardt teaches a pull-tab which comprises an end portion 6 (Figure 1) folded over a main portion 5 (Figure 1). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Ramsey et al. and Sato to include a folded portion, as taught by Hardt, in order to allow the pull-tab to be removed easier.

28. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ramsey et al. (U.S. Pub. No. 2001/0054616) in view of Sato (U.S. Patent No. 5,103,973) and Colby (U.S. Patent No. 3,576,272).

29. Regarding Claim 29, Ramsey et al. and Sato teach all the limitations substantially as claimed except for breakable strips of connecting material which are parallel to each other. However, Colby teaches breakable strips 20/22 (Figure 1) of connecting material which are parallel to each other (Figure 1). Therefore, it would have been obvious for one of ordinary skill in the art at the time the invention was made to modify Ramsey et al. and Sato to include breakable strips, as taught by Colby, in order to provide a well defined opening.

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30. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Response to Arguments

31. Applicant's arguments with respect to claims 18-35 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

32. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH VOLZ whose telephone number is (571) 270-5430. The examiner can normally be reached on Monday-Thursday, 8am-5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/E. V./

Examiner, Art Unit 3781

/Anthony Stashick/

Supervisory Patent Examiner, Art
Unit 3781